

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ADRIENNE BENSON and MARY
SIMONSON, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

DOUBLE DOWN INTERACTIVE,
LLC, a Washington limited liability
company, and INTERNATIONAL
GAME TECHNOLOGY, a Nevada
corporation,

Defendants.

Case No. 18-cv-00525-RBL

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. DEFINITIONS

2 2.1 "Confidential" Material

3 "Confidential" material shall include the following documents and tangible things
4 produced or otherwise exchanged: (1) trade secret or other confidential research, development, or
5 commercial information, or other information or tangible things that qualify for protection under
6 Federal Rule of Civil Procedure 26(c); (2) sensitive and/or non-public contractual terms, settlement
7 agreements or settlement communications with customers, vendors, advertising platforms, and
8 other parties; (3) sensitive pricing and other financial information; (4) sensitive information
9 regarding suppliers and supplier lists; (5) sensitive information regarding customers, customer
10 lists, customer usage, and customer technical requirements; (6) sensitive product development
11 information and information relating to new products; (7) sensitive development processes,
12 designs, drawings, engineering, and hardware and software configuration information; (8)
13 sensitive marketing plans, business plans, forecasts, and business strategies; (9) sensitive
14 communications and information relating to products and services, including, but not limited to,
15 advertising data, which in the hands of competitors would be valuable; (10) customer feedback
16 regarding products that have not been publicly disclosed; (11) protected personal information
17 (including contact information) and other information subject to privacy laws or prohibited from
18 disclosure by statute; (12) sensitive internal financial reporting; and (13) other non-public business
19 information that is treated confidentially by the producing party in the ordinary course of business,
20 the disclosure of which may cause the producing party to be commercially disadvantaged or
21 prejudiced.

22 2.2 Expert

23 "Expert" means a person with specialized knowledge or experience in a matter pertinent to
24 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
25 as a consultant in this action, (2) is not an officer, director, or employee of a Party or an officer,
26 director, or employee of a business competitor to a Party, and (3) at the time of retention, is not

1 anticipated to become an officer, director, or employee of a Party or of a Party's business
2 competitor. Double Down's current business competitors are the companies set forth in Exhibit
3 B.

4 2.3 "Highly Confidential – Attorneys' Eyes Only"

5 "Highly Confidential – Attorney's Eyes Only" materials shall include extremely sensitive
6 Confidential Information or Items," disclosure of which to another Party or Non-Party would
7 create a substantial risk of serious harm that could not be avoided by less restrictive means.

8 2.4 "Highly Confidential – Source Code"

9 "Highly Confidential – Source Code" materials shall include extremely sensitive
10 "Confidential Information or Items" representing computer code and associated comments and
11 revision histories, formulas, engineering specifications, or schematics that define or otherwise
12 describe in detail the algorithms or structure of software or hardware designs, disclosure of which
13 to another Party or Non-Party would create a substantial risk of serious harm that could not be
14 avoided by less restrictive means.

15 2.5 "Protected Material"

16 "Protected Material" shall include any disclosure or material that is designated as
17 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
18 "HIGHLY CONFIDENTIAL – SOURCE CODE."

19 3. SCOPE

20 The protections conferred by this agreement cover not only Protected Material (as defined
21 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
22 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
23 or presentations by parties or their counsel that might reveal Protected Material.

24 However, the protections conferred by this agreement do not cover information that is in
25 the public domain or becomes part of the public domain through trial or otherwise.

26 4. ACCESS TO AND USE OF PROTECTED MATERIAL

1 4.1 Basic Principles. A receiving party may use Protected Material that is disclosed or
2 produced by another party or by a non-party in connection with this case only for prosecuting,
3 defending, or attempting to settle this litigation. For the sake of clarity, Protected Material may not
4 be used to prosecute, defend, or attempt to settle any of the Related Cases. *See* Dkt. 29 (defining
5 “Related Cases”). Protected Material may be disclosed only to the categories of persons and under
6 the conditions described in this agreement. For the sake of clarity, Protected Material may not be
7 disclosed to putative class members unless and until a class comprising those absent class members
8 is certified or those absent class members otherwise become parties to this action. Protected
9 Material must be stored and maintained by a receiving party at a location and in a secure manner
10 that ensures that access is limited to the persons authorized under this agreement.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
12 by the court or permitted in writing by the designating party, a receiving party may disclose any
13 confidential material only to:

14 (a) the receiving party’s counsel of record in this action, as well as employees
15 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

16 (b) the officers, directors, and employees (including in house counsel) of the
17 receiving party to whom disclosure is reasonably necessary for this litigation, unless the
18 parties agree that a particular document or material produced is for Attorney’s Eyes Only
19 and is so designated;

20 (c) experts and consultants to whom disclosure is reasonably necessary for this
21 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging
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1 service instructs the service not to disclose any confidential material to third parties and to
2 immediately return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the
6 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
7 confidential material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information; and

11 (h) other persons only by written consent of the producing party or upon order
12 of the Court and on such conditions as may be agreed or ordered.

13 4.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and
14 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items.

15 Unless otherwise ordered by the court or permitted in writing by the designating party, a
16 receiving party may disclose any information or item designated "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to
20 disclose the information for this litigation and who have signed the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A;

22 (b) Optional as deemed appropriate in case-specific circumstances: in-house
23 counsel of the receiving party (1) who has no involvement in competitive decision-making,
24 (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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(c) Experts of the receiving party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.4 Filing Protected Material. Before filing Protected Material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate

standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate

1 portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires
2 to protect confidential information at trial, the issue should be addressed during the pre-
3 trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent place
5 on the exterior of the container or containers in which the information or item is stored the
6 word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
7 protection, the producing party, to the extent practicable, shall identify the protected
8 portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the designating party's
11 right to secure protection under this agreement for such material. Upon timely correction of a
12 designation, the receiving party must make reasonable efforts to ensure that the material is treated
13 in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
22 regarding confidential designations without court involvement. Any motion regarding confidential
23 designations or for a protective order must include a certification, in the motion or in a declaration
24 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
25 affected parties in an effort to resolve the dispute without court action. The certification must list
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1 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
2 to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under Local
5 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
9 the material in question as confidential until the court rules on the challenge.

10 7. PROCEDURES FOR APPROVING OR OBJECTING TO DISCLOSURE OF “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” OR “HIGHLY CONFIDENTIAL –
12 SOURCE CODE” INFORMATION OR ITEMS TO OR EXPERTS.

13 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
14 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
15 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY” or
16 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 4.3(c) first must make a
17 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
18 CONFIDENTIAL – ATTORNEYS' EYES ONLY” or “HIGHLY CONFIDENTIAL — SOURCE
19 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
20 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches
21 a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), and (5)
22 identifies (by name and number of the case, filing date, and location of court) any litigation in
23 connection with which the Expert has offered expert testimony, including through a declaration,
24 report, or testimony at a deposition or trial, during the preceding four years.

25 (b) A Party that makes a request and provides the information specified in the
26 preceding respective paragraphs may disclose the subject Protected Material to the Expert unless,
within 14 days of delivering the request, the Party receives a written objection from the

1 Designating Party. Any such objection must set forth in detail the grounds on which it is based. If
2 a timely written objection is made, the Parties must meet and confer to try to resolve the matter by
3 agreement within 7 days of the written objection. If no agreement is reached, the Receiving Party
4 may seek permission from the Court to disclose the subject Protected Material to the identified
5 Expert.

6 8. SOURCE CODE

7 (a) To the extent production of source code becomes necessary in this case, a
8 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE”
9 if it comprises or includes confidential, proprietary or trade secret source code.

10 (b) Any source code produced in discovery shall be made available for inspection, in a
11 format allowing it to be reasonably reviewed and searched, during normal business hours or at
12 other mutually agreeable times, at an office of the Producing Party's counsel or another mutually
13 agreed upon location. The source code shall be made available for inspection on a secured
14 computer in a secured room without Internet access or network access to other computers, and the
15 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
16 any recordable media or recordable device. The Producing Party may visually monitor the
17 activities of the Receiving Party's representatives during any source code review, but only to ensure
18 that there is no unauthorized recording, copying, or transmission of the source code.

19 (c) The Receiving Party may request paper copies of limited portions of source code
20 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other
21 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing
22 the source code other than electronically as set forth in paragraph (c) in the first instance. The
23 Producing Party shall provide all such source code in paper form including bates numbers and the
24 label “HIGHLY CONFIDENTIAL – SOURCE CODE.”

25 (d) The Receiving Party shall maintain a record of any individual who has inspected
26 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all

1 paper copies of any printed portions of the source code in a secured, locked area. The Receiving
2 Party shall not create any electronic or other images of the paper copies and shall not convert any
3 of the information contained in the paper copies into any electronic format. The Receiving Party
4 shall only make additional paper copies if such additional copies are (1) necessary to prepare court
5 filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for
6 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during
7 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given
8 to or left with a court reporter or any other unauthorized individual.

9 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
13 must:

14 (a) promptly notify the designating party in writing and include a copy of the subpoena
15 or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to issue in
17 the other litigation that some or all of the material covered by the subpoena or order is subject to
18 this agreement. Such notification shall include a copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
20 designating party whose Protected Material may be affected.

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected
23 Material to any person or in any circumstance not authorized under this agreement, the receiving
24 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
25 (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
26 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
2 Bound” that is attached hereto as Exhibit A.

3 (a) If any party violates the limitations on the use of Protected Information as described
4 above, the party violating this Order may be subject to sanctions as ordered by the Court. In the
5 event motion practice is required to enforce the terms of this Order, the prevailing party on such a
6 motion may be awarded costs, expenses, and fees, including attorney or other professional fees,
7 incurred in connection with the discovery of the violation and the preparation, filing, and arguing
8 of the motion or any other proceedings resulting from the violation.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
14 is not intended to modify whatever procedure may be established in an e-discovery order or
15 agreement that provides for production without prior privilege review. The parties agree to the
16 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 12. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all Protected Material to the producing party, including all copies, extracts and
20 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

21 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
24 product, even if such materials contain Protected Material.

25 The confidentiality obligations imposed by this agreement shall remain in effect until a
26 designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: July 23, 2020

By: s/Todd Logan

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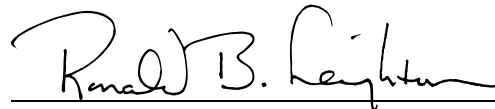
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

7
8 DATED this 28th day of July, 2020.

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10 A handwritten signature in black ink, reading "Ronald B. Leighton". The signature is written in a cursive, flowing style. The first name "Ronald" is written with a large, stylized "R". The middle initial "B." is written with a large, stylized "B" followed by a period. The last name "Leighton" is written with a large, stylized "L". The signature is written on a horizontal line.

11 Ronald B. Leighton
12 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Benson et al. v. Double Down Interactive, LLC et al.*, Case No. 18-cv-00525-RBL (W.D.
Wash.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

EXHIBIT B

DOUBLE DOWN INTERACTIVE'S BUSINESS COMPETITORS AS OF JULY 10, 2020

For purposes of Section 2.2 of this Stipulated Protective Order, Double Down Interactive's business competitors are Product Madness/Big Fish Games (subsidiaries of Aristocrat), Scientific Games Corp., GSN, Playtika (acquired by a group of investors led by Shanghai Giant Network Technology Co.), Zynga Inc., HUUUGE Games, Murka, Glu Mobile, Activision Blizzard, Electronic Arts, Kabam, Rovio and Tencent Holdings.